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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/672,840

09/26/2003

John Marvin Ackermann

BUS-025877-DIV#2

1336

7590

08/30/2004

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EXAMINER

VORTMAN, ANATOLY

ART UNIT

PAPER NUMBER

2835

DATE MAILED: 08/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/672,840

Applicant(s)

ACKERMANN, JOHN MARVIN

Examiner

Anatoly Vortman

Art Unit

2835



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-20 and 29-42 is/are pending in the application.
- 4a) Of the above claim(s) 19, 34-36, 40 and 41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-18, 20, 30, 32, 33, 37, 39 and 42 is/are rejected.
- 7) ☒ Claim(s) 29, 31 and 38 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

*Amendment*

1. The submission of the amendment filed on 07/21/04 is acknowledged. At this point claim 31 was amended. Claims 15-20 and 29-42 are pending in the instant application. Claims 19, 34-36, 40, and 41 have been previously withdrawn from consideration on the merits as drawn to a non-elected invention.

*Claim Rejections - 35 USC § 103*

2. Claims 15-18, 20, 30, 32, 33, 37, 39, and 42 have not been amended and therefore are rejected under 35 U.S.C. 103(a) for the same reasons as in the non-final Office action mailed on 4/28/04.

*Allowable Subject Matter*

3. Claims 29, 31, and 38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. The following is a statement of reasons for the indication of allowable subject matter: claim 31 as amended recites: "applying the coating such that a first portion of the weak spot

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closest to the first end of the fuse element is covered with the coating and a second portion of the weak spot closest to the first end of the fuse element is uncovered by the coating, the second portion farther from the first end of the fuse element than the first portion". The aforementioned limitations in combination with all remaining limitations of claim 31, are believed to render the claim patentable over the cited references.

Reasons for allowance of claims 29 and 38 have been presented in paragraph 7 of the non-final Office action.

### ***Response to Arguments***

5. Applicant's arguments filed on 07/21/2004 have been fully considered but they are not persuasive.

The main thrust of the Applicant's arguments may be characterized by the following remarks: the Applicant argues that "the arc energy absorbing coating employed in the present invention is submitted to be fundamentally different in purpose, structure, and effect than elastomeric bodies (7) described by Baird et al. and promoted to maintain high arc voltage and energy for selected time periods. The objectives of the present invention are therefore generally contradictory to the teaching of Baird et al., and it is respectfully submitted that one of ordinary skill in the art at the time the invention was made would not look to Baird et al. as suggesting a potential solution to arc energy absorption and arc extinguishing issues".

The Examiner would like to reiterate that motivation as it was outlined in the outstanding non-final Office action for combining Mollet and Baird et al. references was "in order to provide

fuse of Mollet with the arc constricting capabilities (column 3, lines 1-12)”, and not for the purpose of providing said fuse of Mollet with arc energy absorbtion and arc extinguishing capabilities as alleged by the Applicant.

The reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant. *In re Linter*, 458 F.2d 1013, 173 USPQ 560 (CCPA 1972) (discussed below); *In re Dillon*, 919 F.2d 688, 16 USPQ2d 1897 (Fed. Cir. 1990), cert. denied, 500 U.S. 904 (1991) (discussed below). Although *Ex parte Levengood*, 28 USPQ2d 1300, 1302 (Bd. Pat. App. & Inter. 1993) states that obviousness cannot be established by combining references “without also providing evidence of the motivating force which would impel one skilled in the art to do what the patent applicant has done” (emphasis added), reading the quotation in context it is clear that while there must be motivation to make the claimed invention, there is no requirement that the prior art provide the same reason as the Applicant to make the claimed invention.

Furthermore, the Applicant went all declaring that “there is no indication that the weak spots of Baird et al. are located at the end portions of the fuse element, as recited in Claim 15” and “there is no indication that the arc blocking tabs of Rybka et al. are located at the end portions of the fuse element, as recited in Claim 15” (see first paragraph on p. 10 of the Amendment).

To the contrary the Examiner would like to direct the Applicant’s attention that firstly, claim 15 does not recite weak spots at all and secondly Fig. 2 and 3 of Baird et al show weak spots (8) positioned at the ends of the fuse element (6).

Furthermore, Rybka et al. clearly shows on Fig. 2-4 and 6 that arc blocking tabs (118, 120) are positioned at the ends of the fuse element (122).

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anatoly Vortman whose telephone number is 571-272-2047. The examiner can normally be reached on Monday-Friday, between 10:00 am and 6:30 pm..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Lynn Feild can be reached on 571-272-2092. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AV

A handwritten signature in black ink, appearing to read 'A. Vortman', followed by a horizontal line.

Anatoly Vortman  
Primary Examiner  
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